

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Semertzides, John N. : Paper No:
Serial No. 10/643,664 : Group Art Unit: 1616
Filed: 08/19/2003 : Examiner: Webman, Edward J
For: Compositions and Method for the Treatment and Prevention of Adhesions

RESPONSE TO RESTRICTION REQUIREMENT

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement, dated April 19, 2007, please consider the following remarks.

In response to the amended claims, submitted on January 26, 2007, the Examiner has requested an election between what he contends are three patentably distinct species:

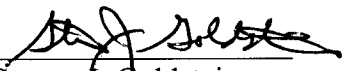
- (1) method where cells and protein are applied separately (claim 34);
- (2) method where cells and protein are mixed prior to application (claim 35); and
- (3) method where a layer comprising a mixture of cells and protein is followed by a layer of a protein (claim 36).

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Applicant strongly objects to this election of species requirement. The three methods listed by the Examiner are nothing more than three related embodiments of the invention defined in claim 21. There is nothing in the USPTO rules that says that separate embodiments are to be considered separate species and, in fact, generally they are not. The Examiner says that these three embodiments are “patentably distinct” but provides no real evidence to support that position. While the Examiner suggests “the three methods yield structures which are physically different from each other”, he has provided no basis for believing that these different structures are actually independent or distinct or would be classified differently for searching. But regardless of that, the search of the invention defined in claim 21 would clearly include with its scope all three of the embodiments listed by the Examiner. The Examiner has provided no evidence that this would not be the case. Therefore, under MPEP 803, all three of the embodiments should be considered together. For that reason, it is requested that the election of species requirement be withdrawn.

If the requirement is not withdrawn, the Applicant elects the species wherein the cells and protein are mixed prior to application (as defined in claim 35). Claims 21, 28,29,33, and 35 read on the elected species.

Respectfully submitted,
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